

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

In re:)
)
AVR ENTERPRISES, INC.) **Case No. 10-11965-BFK**
) **Chapter 11**
Debtor)
)
AVR ENTERPRISES, INC.)
)
Plaintiff)
)
vs.) **Adversary Proceeding No. 12-01106**
)
TECH DATA CORPORATION) **NOT FOR PUBLICATION IN**
) **WEST'S BANKRUPTCY REPORTER**
Defendant)

REPORT AND RECOMMENDATION

This matter comes before the Court on the Plaintiff's Motion for Default Judgment against Defendant Tech Data Corporation (Docket No. 6). The Plaintiff filed the Complaint on March 12, 2012, and seeks to recover \$18,773.80 from the Defendant pursuant to 11 U.S.C. § 547(b). Because no Answer was filed to the Plaintiff's Complaint, the Court recommends that the Plaintiff's Motion for Default Judgment be granted, and that a money judgment in the amount of \$18,773.80 be entered for the Plaintiff.

Jurisdiction

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b) (2012) and the Order of Reference of the U.S. District Court for this District dated August 15, 1984. This is a core proceeding under 28 U.S.C. § 157(b)(2)(F). Complaint ¶ 1. Further, because the Plaintiff seeks to augment the bankruptcy estate by the entry of a money judgment, the Court will enter a

Report and Recommendation, and not a final order, pursuant to the District Court's opinion in *McCarthy v. Wells Fargo Bank, N.A. (In re El-Atari)*, No. 1:11cv1090, 2011 WL 5828013 (E.D. Va. Nov. 18, 2011).

The Plaintiff's Motion for Default Judgment

According to the allegations of the Complaint, between December 16, 2009, and February 8, 2010, Plaintiff AVR Enterprises, Inc. made several transfers totaling \$18,773.80 to Defendant, Tech Data Corporation. Complaint ¶ 4. These transfers were made pursuant to an antecedent debt owed by the Debtor. Complaint ¶ 5. These transfers were made while the Debtor was insolvent and within ninety days of the filing of the bankruptcy petition. Complaint ¶¶ 6-7.

On March 12, 2012, the Plaintiff filed this adversary proceeding to avoid the transfers and to recover the funds. On March 13, 2012, this Court issued a Summons and Notice of Pre-Trial Conference, which required the Defendants to file an Answer no later than April 12, 2012. Docket No. 2. The Summons was properly served on the Defendants via first class mail on March 14, 2012, pursuant to Fed. R. Bankr. P. 7004(b)(9). Docket No. 5. On July 18, 2012, the Plaintiff filed the present Motion for Default Judgment, which seeks a \$18,773.80 money judgment against the Defendant. Docket No. 6. No Affidavit under the Servicemembers' Civil Relief Act, 50 U.S.C. App. § 521, is required because the Defendant is not an individual.

On August 14, 2012, the Court held a hearing on the Plaintiff's Motion for Default Judgment. The Plaintiff was present by counsel. The Defendants failed to appear at the hearing. Pursuant to Fed. R. Bankr. P. 7012(a), “[i]f a complaint is duly served, the defendant shall serve an answer within 30 days after the issuance of the summons, except when a different time is prescribed by the court.” The Court finds that the Summons was properly served on the Defendant, and that the Defendant failed to file an Answer in accordance with Fed. R. Bankr. P.

7012. The Court also finds that the Defendant failed to file an Answer within the 30 day extension that Plaintiff granted. The Court further finds that the amount sought is for a sum certain. Accordingly, this Court recommends that the Plaintiff's Motion for Default Judgment be granted, and that a money judgment in the amount of \$18,773.80 be entered for the Plaintiff.

Conclusion

For the reasons stated above, the Court recommends that the Plaintiff's Motion for Default Judgment be GRANTED, and that a money judgment in the amount of \$18,773.80 be ENTERED for the Plaintiff, against the Defendant. The Court will issue an Order making the foregoing recommendation to the District Court.

Date:

Brian F. Kenney
United States Bankruptcy Judge

Copies to:

AVR Enterprises, Inc.
44845 Falcon Place
Suite 101A
Dulles, VA 20166
Plaintiff

James P. Campbell
Campbell Flannery, P.C.
One Village Plaza
1602 Village Market Boulevard, Suite 220
Leesburg, VA 20175
Counsel for Plaintiff

Tech Data Corporation
4001 North Ninth Street
Arlington, VA 22203
Defendant